TEACHERS' RETIREMENT BOARD

SUBCOMMITTEE ON CORPORATE GOVERNANCE

SUBJECT: Corporate Governance Issues — ITEM NUMBER: 3

ATTACHMENT(S): 1

ACTION: X — DATE OF MEETING: December 4, 2002

INFORMATION: ___ — PRESENTER(S): Janice Hester-Amey

Executive Summary

The Chair of the Subcommittee has contacted staff and directed that this item be brought forth at this meeting. CalPERS is co-sponsoring a resolution at McDermott International regarding the Company's reincorporation from Panama to a U.S. state. CalSTRS does not currently own any of this security. However, the Chair has asked both CalSTRS and CalPERS to support similar shareholder proposals at Ingersoll-Rand and Tyco regarding the companies' reincorporation from Delaware to a U.S. state. All three shareholder proposals have the American Federation of State, County and Municipal Employees Pension Plan (AFSCME) as the primary proponent.

Staff recommends that CalSTRS support the proposals at these two companies. CalSTRS owns 145,818 shares of Ingersoll-Rand and 869,749 shares of Tyco in its actively managed accounts. During the 2002 proxy season, CalSTRS voted against management proposals to reincorporate from the U.S. to so-called tax haven jurisdictions at Stanley Works and Nabors Industries.

RESOLVED, that the shareholders of Ingersoll-Rand Company Limited ("IR") urge IR's Board of Directors to take the measures necessary to change IR's jurisdiction of incorporation from Bermuda to a U.S. state.

SUPPORTING STATEMENT

We believe that it would be in the interests of both IR and its shareholders for IR to reincorporate back to the U.S. On December 31, 2001, IR changed its jurisdiction of incorporation from New Jersey to Bermuda. Since that time, legislative and regulatory developments, as well as a shift in public sentiment regarding corporate accountability and reincorporation in tax haven jurisdictions, have created the risk that IR will be financially harmed by its Bermuda incorporation.

The disadvantages of IR's Bermuda incorporation, we think, outweigh any tax savings it currently enjoys. First, those tax savings can be eliminated by Congress at any time. In 2002, bills were introduced in the House and Senate to require that companies—like IR—that reincorporated using an "inversion" transaction be treated as U.S. companies. All of the bills were retroactive, some to September 11, 2001, bringing IR within their coverage.

Second, IR's Bermuda incorporation could harm its ability to obtain contracts with the federal government. Bills were passed by the House and Senate in 2002 prohibiting U.S. companies that reincorporated using inversion transactions from receiving military contracts and contracts with the proposed Homeland Security Department. An August 20, 2002 Washington Post article estimated that IR stands to lose $20 million a year in federal contracts if the measures are enacted.

Third, we believe that incorporation in a tax haven has the potential to harm IR's reputation and image. Commentators have noted that the Bermuda incorporations of scandal-plagued companies like Tyco and Global Crossing have linked tax avoidance, in the minds of some, to more unsavory practices. Patriotism engendered by the September 11 terrorist attacks have also led to resentment of companies that reincorporate in order to avoid taxes. Republican Senator Charles Grassley, who co-authored the Senate bill, called such reincorporations "immoral and unethical." An article in the April 22-29, 2002 issue of The New Yorker entitled "Tax Cheat, Inc." highlighted IR's move to Bermuda and noted that IR has major contracts with the U.S. federal government. "Yet, when it comes to paying taxes, Ingersoll-Rand is not an American company."

Finally, incorporation in Bermuda makes it more difficult for shareholders to hold companies, their officers and directors legally accountable in the event of wrongdoing. Recent events, we think, demonstrate how crucial it is that, in the event of legal violations by officers or directors, shareholders have the ability to pursue legal remedies. Class actions are generally not available under Bermuda law. Under Bermuda law, unlike the law of all U.S. states, shareholders have extremely limited ability to sue officers and directors derivatively, on behalf of the corporation. Incorporation in Bermuda may affect the enforceability of judgments obtained in a U.S. court.

For these reasons, we urge shareholders to vote FOR this proposal.

SHAREHOLDER PROPOSAL

RESOLVED, that the shareholders of Tyco International Ltd. ("Tyco") urge Tyco's Board of Directors to take the measures necessary to change Tyco's jurisdiction of incorporation from Bermuda to Delaware.

SUPPORTING STATEMENT

Tyco and its shareholders would benefit if Tyco changed its jurisdiction of incorporation from Bermuda to Delaware. First, Delaware's corporate laws are updated to meet changing business needs and are more responsive than Bermuda law to the needs of shareholders. Delaware is the state of incorporation for 60% of Fortune 500 companies, according to the Delaware Division of Corporations. We believe that so many companies choose to incorporate in Delaware because it has an advanced and flexible corporate law, expert specialized courts dealing with corporate-law issues, a responsive state legislature and a highly-developed body of case law that allows corporations and shareholders to understand the consequences of their actions and plan accordingly. We believe the stability, transparency and predictability of Delaware's corporate-law framework are superior to Bermuda's and provide advantages to shareholders.

Second, incorporation in Bermuda makes it more difficult for shareholders to hold companies, their officers and directors legally accountable in the event of wrongdoing. Recent events, we think, demonstrate how crucial it is that, in the event of legal violations by officers or directors, shareholders have the ability to pursue legal remedies. Unlike both U.S. federal and Delaware law, class actions are generally not available under Bermuda law. Under Bermuda law, shareholders have extremely limited ability to sue officers and directors derivatively, on behalf of the corporation. By contrast, under Delaware law, shareholders may sue derivatively for, among other things, breach of fiduciary duty, corporate waste and actions taken in violation of applicable law.

Third, Delaware law affords shareholders rights not provided under Bermuda law. Unlike Delaware law, Bermuda law does not require shareholder approval for a corporation to dispose of all or substantially all of its assets. Bermuda law does not permit action by written consent of fewer than all shareholders, while Delaware law does.

Fourth, incorporation in Bermuda may affect the enforceability of judgments obtained in a U.S. court. A judgment for money damages based on civil liability rendered by a U.S. court is not automatically enforceable in Bermuda because the U.S. and Bermuda do not have a treaty providing for reciprocal enforcement of judgments in civil matters. A Bermuda court may not recognize a judgment of a U.S. court if it is deemed contrary to Bermuda public policy, and Bermuda public policy may differ significantly from U.S. public policy.

Finally, we believe that incorporation in Bermuda creates the impression that Tyco has sought to evade taxes and insulate itself and its officers and directors from liability. As Tyco struggles to restore investor confidence, reincorporating to Delaware would send a strong message that Tyco values its shareholders and seeks to play by the same rules as other U.S. corporations.

We urge shareholders to vote FOR this proposal.